
ENGROSSED SUBSTITUTE HOUSE BILL 1147

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Kretz, B. Sullivan, Hinkle, Pettigrew, Linville, Kristiansen, Blake, Takko, Newhouse, Warnick, Hailey, Grant, Armstrong, Kessler, Wallace, Haigh, Moeller, Haler and Condotta)

READ FIRST TIME 02/02/07.

1 AN ACT Relating to damage to livestock caused by wildlife; amending
2 RCW 77.36.005, 77.36.010, 77.36.040, 77.36.050, 77.36.060, 77.36.070,
3 and 77.36.080; adding a new section to chapter 77.36 RCW; and creating
4 a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.36.005 and 1996 c 54 s 1 are each amended to read
7 as follows:

8 The legislature finds that:

9 (1) As the number of people in the state grows, wildlife management
10 techniques change, and wildlife habitat is altered, people will
11 encounter wildlife more frequently. As a result, conflicts between
12 humans and wildlife will also increase. Wildlife is a public resource
13 of significant value to the people of the state and the responsibility
14 to minimize and resolve these conflicts is shared by all citizens of
15 the state.

16 (2) In particular, the state recognizes the importance of
17 commercial agricultural and horticultural crop production, the state's
18 commercial livestock industry, and the value of healthy ((~~deer and~~
19 elk)) wildlife populations, which can damage ((~~such~~)) crops and

1 commercial livestock. The legislature further finds that damage
2 prevention is key to maintaining healthy ~~((deer and elk))~~ wildlife
3 populations, wildlife-related recreational opportunities, ~~((and))~~
4 commercially productive agricultural and horticultural crops, and a
5 thriving commercial livestock industry, and that the state,
6 participants in wildlife recreation, and private landowners and tenants
7 share the responsibility for damage prevention. Toward this end, the
8 legislature encourages landowners and tenants to contribute through
9 their land management practices to healthy wildlife populations and to
10 provide access for related recreation. It is in the best interests of
11 the state for the department ~~((of fish and wildlife))~~ to respond
12 quickly to wildlife damage complaints and to work with these landowners
13 and tenants to minimize and/or prevent damages and conflicts while
14 maintaining ~~((deer and elk))~~ wildlife populations for enjoyment by all
15 citizens of the state.

16 (3) A timely and simplified process for resolving claims for
17 damages caused by ~~((deer and elk))~~ wildlife for commercial agricultural
18 ~~((or))~~, horticultural, or commercial livestock products is beneficial
19 to the claimant and the state.

20 **Sec. 2.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read
21 as follows:

22 ~~((Unless otherwise specified,))~~ The ~~((following))~~ definitions in
23 this section apply throughout this chapter~~((+))~~ unless the context
24 clearly requires otherwise.

25 (1) "Commercial livestock" means cattle, sheep, and horses held or
26 raised by a person for sale, trade, or barter, and from which the
27 person derives an annual income from the sales of the animals in excess
28 of ten thousand dollars.

29 (2) "Crop" means a commercially raised horticultural and/or
30 agricultural product and includes growing or harvested product but does
31 not include livestock. For the purposes of this chapter all parts of
32 horticultural trees shall be considered a crop and shall be eligible
33 for claims.

34 ~~((+2))~~ (3) "Emergency" means an unforeseen circumstance beyond the
35 control of the landowner or tenant that presents a real and immediate
36 threat to crops, domestic animals, or fowl.

1 ~~((3))~~ (4) "Immediate family member" means spouse, brother,
2 sister, grandparent, parent, child, or grandchild.

3 (5) "Predatory wildlife" means bears, wolves, and cougars.

4 **Sec. 3.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read
5 as follows:

6 (1)(a) Pursuant to this section, the director or the director's
7 designee may distribute money appropriated to pay claims for damages to
8 crops caused by wild deer or elk in an amount of up to ten thousand
9 dollars per claim. Damages payable under this section are limited to
10 the value of such commercially raised horticultural or agricultural
11 crops, whether growing or harvested, and shall be paid only to the
12 owner of the crop at the time of damage, without assignment. Damages
13 shall not include damage to other real or personal property including
14 other vegetation or animals, damages caused by animals other than wild
15 deer or elk, lost profits, consequential damages, or any other damages
16 whatsoever. ~~((These damages))~~

17 (b) Pursuant to this section, the director or the director's
18 designee may distribute money appropriated to reimburse the owner of
19 commercial livestock that has been killed by predatory wildlife, or
20 injured by predatory wildlife to such a degree that the market value of
21 the commercial livestock has been diminished. Each individual animal
22 represents one claim, and each claim must be paid the fair market value
23 of the killed or injured animal.

24 (c) Damage claim payments under this section shall comprise the
25 exclusive remedy for claims against the state for damages caused by
26 wildlife.

27 (2) The director may, consistent with section 4 of this act, adopt
28 rules for the form of affidavits or proof to be provided in claims
29 under this section ~~((The director may adopt rules))~~ and to specify
30 the time and method of assessing damage. The burden of proving damages
31 shall be on the claimant. Payment of claims shall remain subject to
32 the other conditions and limits of this chapter.

33 (3) If funds are limited, payments of claims shall be prioritized
34 in the order that the claims are received. No claim may be processed
35 if:

36 (a) The claimant did not notify the department within ten days of
37 discovery of ~~((the))~~ damage to crops or within seventy-two hours of the

1 discovery of a predatory wildlife attack on commercial livestock. If
2 the claimant intends to take steps that prevent determination of
3 damages, such as harvest of damaged crops, then the claimant shall
4 notify the department as soon as reasonably possible after discovery so
5 that the department has an opportunity to document the damage and take
6 steps to prevent additional damage; or

7 (b) The claimant did not present a complete, written claim within
8 sixty days after the damage, or the last day of damaging if the damage
9 was of a continuing nature.

10 (4)(a) The director or the director's designee may examine and
11 assess the damage upon notice, and may convene, upon its own initiative
12 or on the request of the claimant, the commercial livestock valuation
13 committee created in section 4 of this act to assist with the
14 assessment of the damage.

15 (b) The department and claimant may agree to an assessment of
16 damages by a neutral person or persons knowledgeable in horticultural
17 (~~(or)~~), agricultural, or commercial livestock practices. The
18 department and claimant shall share equally in the costs of such third
19 party examination and assessment of damage.

20 (5) There shall be no payment for damages if:

21 (a) The crops are on lands leased from any public agency;

22 (b) The landowner or claimant failed to use or maintain applicable
23 damage prevention materials or methods furnished by the department, or
24 failed to comply with a wildlife damage prevention agreement under RCW
25 77.12.260;

26 (c) The director has expended all funds appropriated for payment of
27 such claims for the current fiscal year; or

28 (d) The damages are covered by insurance. The claimant shall
29 notify the department at the time of claim of insurance coverage in the
30 manner required by the director. Insurance coverage shall cover all
31 damages prior to any payment under this chapter.

32 (6) When there is a determination of claim by the director or the
33 director's designee pursuant to this section, the claimant has sixty
34 days to accept the claim or it is deemed rejected.

35 (7) The limitation on claim payments established in subsection
36 (5)(a) of this section is limited only to crop damage and does not
37 apply to commercial livestock damaged or killed on land leased by a
38 public agency.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.36 RCW
2 to read as follows:

3 (1)(a) The commercial livestock valuation committee is created to
4 assist the director with the determination of the market value of
5 killed or injured commercial livestock for the purposes of reimbursing
6 the owner under RCW 77.36.040.

7 (b) In assisting with the determination of the market value of
8 injured or killed commercial livestock, the members of the commercial
9 livestock valuation committee must have access to all documentation
10 regarding a particular claim, along with other information that is
11 deemed useful by the committee members.

12 (c) The recommendation of the commercial livestock valuation
13 committee is deemed final when four or more of the committee members
14 determine the fair market value, if any, for the claim in question.

15 (2) The commercial livestock valuation committee is composed of
16 seven members appointed by the commission. The membership of the
17 commercial livestock valuation committee must be composed as follows:

18 (a) Three members must be professionally involved in sheep
19 production;

20 (b) Three members must be professionally involved in cattle
21 production; and

22 (c) One member must be professionally involved in horse production.

23 (3) The members of the commercial livestock valuation committee are
24 appointed for a four-year term. If a vacancy occurs on the committee
25 prior to the expiration of a term, the commission must appoint a
26 replacement within sixty days to complete the term. After a term
27 expires, a committee member may be reappointed.

28 (4) The commercial livestock valuation committee must be convened
29 at time intervals necessary to provide timely recommendations for
30 claims filed under RCW 77.36.040. A majority of members currently
31 serving on the committee constitutes a quorum, and the chair of the
32 committee must be selected by the committee members. The department
33 must provide staff support for all official committee meetings.

34 (5) Each member of the commercial livestock valuation committee
35 shall serve without compensation but may be reimbursed for travel
36 expenses as authorized in RCW 43.03.050 and 43.03.060.

37 (6) The members of the commercial livestock valuation committee, or

1 individuals acting on their behalf, are immune from civil liability for
2 official acts performed in the course of their duties.

3 **Sec. 5.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read
4 as follows:

5 (1) If the claimant does not accept the director's decision under
6 RCW 77.36.040, or if the claim exceeds ten thousand dollars, then the
7 claim may be filed with the ~~((office of))~~ risk management division of
8 the office of financial management under RCW 4.92.040(5). The ~~((office~~
9 ~~of))~~ risk management division shall recommend to the legislature
10 whether the claim should be paid. If the legislature approves the
11 claim, the director shall pay it from moneys appropriated for that
12 purpose. No funds shall be expended for damages under this chapter
13 except as appropriated by the legislature.

14 (2) For livestock claims only, the risk management division of the
15 office of financial management may consult the commercial livestock
16 valuation committee created in section 4 of this act.

17 **Sec. 6.** RCW 77.36.060 and 1996 c 54 s 7 are each amended to read
18 as follows:

19 The director may refuse to consider and pay claims ~~((of))~~ for
20 damage to crops for persons who have posted the property against
21 hunting or who have not allowed public hunting during the season prior
22 to the occurrence of the damages.

23 **Sec. 7.** RCW 77.36.070 and 1996 c 54 s 8 are each amended to read
24 as follows:

25 (1) The department may pay no more than one hundred twenty thousand
26 dollars per fiscal year from the state wildlife ~~((fund))~~ account
27 created in RCW 77.12.170 for claims under RCW 77.36.040 and for
28 assessment costs and compromise of claims. Such money shall be used to
29 pay animal damage claims only if the claim meets the conditions of RCW
30 77.36.040 and, for crop claims only, the damage occurred in a place
31 where the opportunity to hunt was not restricted or prohibited by a
32 county, municipality, or other public entity during the season prior to
33 the occurrence of the damage.

34 (2) Of the amount the department is authorized to pay for claims

1 under this section, no more than one-half of that amount may be used to
2 reimburse the owners of commercial livestock under this chapter for
3 losses due to predatory wildlife attacks.

4 **Sec. 8.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read
5 as follows:

6 (1) The department may pay no more than thirty thousand dollars per
7 fiscal year from the general fund for claims under RCW 77.36.040 and
8 for assessment costs and compromise of claims unless the legislature
9 declares an emergency. Such money shall be used to pay animal damage
10 claims only if the claim meets the conditions of RCW 77.36.040 and, for
11 crop claims only, the damage occurred in a place where the opportunity
12 to hunt was restricted or prohibited by a county, municipality, or
13 other public entity during the season prior to the occurrence of the
14 damage.

15 (2) The legislature may declare an emergency, defined for the
16 purposes of this section as any happening arising from weather, fire,
17 or other natural conditions(~~(, or fire)~~) that causes unusually great
18 damage to (~~commercially raised~~) commercial livestock by predatory
19 wildlife or to agricultural or horticultural crops by deer or elk. In
20 an emergency, the department may pay as much as may be subsequently
21 appropriated, in addition to the funds authorized under subsection (1)
22 of this section, for claims under RCW 77.36.040 and for assessment and
23 compromise of claims. Such money shall be used to pay animal damage
24 claims only if the claim meets the conditions of RCW 77.36.040 and the
25 department has expended all funds authorized under RCW 77.36.070 or
26 subsection (1) of this section.

27 (3) Of the amount the department is authorized to pay for claims
28 under this section, no more than one-half of that amount may be used to
29 reimburse the owners of commercial livestock under this chapter for
30 losses due to predatory wildlife attacks.

31 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this
32 act, referencing this act by bill or chapter number, is not provided by
33 June 30, 2007, in the omnibus appropriations act, this act is null and
34 void.

--- END ---